

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL BERNARD JOHNSON III,

No. C 07-05756 SI

Plaintiff,

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S MOTION
FOR RECUSAL AND REASSIGNMENT**

v.

CHEVRON CORPORATION, et al.,

Defendants.

Plaintiff has filed a motion for recusal of the undersigned judge and reassignment of this action to another judge in this district. The motion is DENIED because the Court lacks jurisdiction to hear it. Plaintiff brings this motion while his action is pending on appeal to the Ninth Circuit. "As a general rule, the filing of a notice of appeal divests a district court of jurisdiction over those aspects of the case involved in the appeal." *Stein v. Wood*, 127 F.3d 1187, 1189 (9th Cir. 1997).¹ Moreover, both of the statutes under which plaintiff seeks recusal require that there be a "proceeding" pending before the judge sought to be recused. *See* 28 U.S.C. §§ 144, 455(a). As plaintiff's case is currently on appeal, there is no "proceeding" pending before this Court, and the Court thus lacks jurisdiction to consider the motion.

The motion for recusal and reassignment is therefore DENIED without prejudice to renewal after plaintiff's appeal is decided, in the event any portion of the case is remanded to this Court.

IT IS SO ORDERED.

Dated: August 4, 2010



SUSAN ILLSTON
United States District Judge

¹ This rule is subject to certain exceptions not applicable here, such as a request to correct or clarify a prior order entered by the district court. *Id.*